

**NHDES Wetlands Program Rulemaking & Process Improvement Effort**  
**2014 Spring Listening Session – Portsmouth**  
**April 29, 2014**

**Comments from Participants**

- A broader overhaul and perspective is needed - our laws are not protecting WQ and natural resources the way they should be and do not ensure that things won't get worse. If manage location and design new development properly, should not have a net impact = no need for project specific mitigation.
- Address the need to repeatedly raise road beds and other maintenance activities associated with changes in flood zones and levels - can there be an easier, streamlined process for these necessary improvements? or set design or performance standards (e.g. slopes)? Can there be an incentive for using an alternative design with less impact?
- Be cautious about applying approaches from elsewhere without accounting for varied factors
- Be up front about the environmental tradeoffs that will be potentially made with standardization of responses & requirements: may not have enough flexibility for science-based decisions, e.g., to push further to support ecological and human uses if "locked in" to a standard process & requirement
- Concerned about tide gates impeding flow out and the potential for flooding behind them with a large precipitation event
- Concerned that the Feds apply the same standard approach and requirements across all states & that will not necessarily meet the needs of NH (e.g., would be overly strict for ag & timber activities); but having consistency between the state and federal entities is helpful
- Consider alternative mitigation options for smaller projects that would require mitigation (from 5,000-10,000 sq ft impact); and consider reducing/not requiring mitigation when a project is providing an overall improvement for the environment (e.g., replacing a culvert with a bridge, use of bridges for timber harvest roads, farm ponds & wildlife ponds that = new wetlands.
- Consider more naturalized design (e.g., natural "armoring" and protection)
- Evaluate cumulative impacts and evaluate impacts against the carrying capacity of the system - work toward "zero-sum" tradeoffs whereby pollution or impact is reduced elsewhere to compensate for new pollution and/or impacts
- For ag and forestry, should allow operations per BMPs under notification. Prime wetlands buffer restrictions currently prohibit some existing uses from continuing.
- Important to apply a more holistic approach to evaluating project impacts (not just the minimum sq ft of wetland impacted)

- Make sure to evaluate and understand the success of past mitigation projects to guide rules going forward
- Natural Heritage Bureau data check works well
- Need to allow for some type of hard armoring/stabilization in tidal areas (and elsewhere) - it should not always require a waiver (considering specifying where/when hard armoring would be acceptable/appropriate, e.g., to protect an existing historic building, protection of infrastructure)
- Need to do development right the first time (prevent negative impacts, such as stormwater runoff) because adding BMPs after are more expensive and often are less effective. We should be maintaining natural landscape and soils for protection and treatment, design of development is important for preservation and protection of environmental quality
- Need to have variable design requirements that adjust depending on the situation (e.g., scale of impacts, value/function of resources on site) - such as buffer requirements
- New forestry notification process works well, but there seems to be some conflict with current rules that should be resolved
- Prime wetlands waiver for approved activities should be permanent (for ag and timber, just like a development activity); particularly when the activity is the same use of the land as before (e.g., ag & timber harvest, wildlife clearing) and is beneficial for a healthy ecosystem
- Program should account for climate change: perhaps frequent re-mapping of resource limits? different requirements applied? evaluation of future potential scenarios (e.g., under alternative future sea level rise scenarios, with new flood maps)
- Provide a more positive approach to regulations - more encouragement of good behavior and practices (e.g., how to design to offset impacts even when not "require" to provide for mitigation, more emphasis on what one can do versus what one cannot do, allow for creativity to find the best approach (versus prescriptive)
- Recognize and acknowledge within rules and process that not all activities are negative in terms of "impact" to the environment
- Rising sea level will have an effect on the Highest Observable Tide Line and flood zones - build into the process a way to easily recalibrate as these lines move; communicate to applicants that the old highest observable tide line and 100' set back may be different now than before!
- Should consider and project future changes with changing climate and changing hydrological conditions when evaluating proposed impacts to wetland resources (particularly important in coastal areas with sea level rise)
- Should evaluate the number of additional projects that would require mitigation if you lower the sq ft of impact threshold for when mitigation is required

- Should factor in the quality of the resource (functions and values) along with the size of the impact - perhaps a weighted approach that accounts for quality/value as well as size
- Stream crossing rules do seem to work - some gaps - but are generally OK
- The different classes of prime wetlands now under the statute creates uncertainty and is not science-based
- There is an opportunity for DES to work with municipalities on cooperative "enforcement" - provide more guidance and education to municipalities on working with land owners/developers/etc to come into compliance versus immediately escalating to fines and other legal action
- There should be more consideration of locally-important resources in project evaluation
- Time limit for emergency authorizations should match the FEMA time limit
- Why have 2 permits apply in the tidal buffer zone (wetlands & shoreland) - should just have 1
- With respect to potential vernal pools - how small is too small to worry about? There should be a reasonable balance between the size and quality of a vernal pool and what activities are allowed (or not allowed) within a certain proximity of the pool